

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION III

In the matter of : No. 74-242
City of New Cumberland : ORDER
New Cumberland, West Virginia 26047 :
Proceeding under §309(a)(3) Federal :
Water Pollution Control Act :

FINDINGS OF FACT

1. On June 28, 1974, the Environmental Protection Agency, Region III (the "Agency") issued an NPDES permit, No. WV 0025119, to the City of New Cumberland, West Virginia (the "City") for a discharge to the Ohio River from a facility known as the New Cumberland Sewage Treatment Plant. This permit became effective on July 28, 1974.
2. On page 5 this permit requires the City to monitor the operation and efficiency of all treatment and control facilities on an average monthly basis, and to submit to the Agency reports of these values, on a quarterly basis. Quarterly reports are required for periods beginning on the first day of April, July, October, and January.
3. On page 6 this permit lists the parameters to be monitored and reported by the City. They are:

Total Flow
BOD/5
Suspended Solids
Fecal Coliform
pH

4. In a letter dated August 12, 1974, Sharon Northcroft, City Clerk, advised the Agency that the City is at present unable to comply with the monitoring requirements set by the permit, due to lack of equipment. Ms. Northcroft stated the City's intention of purchasing such equipment, but gave no date by which the purchase would be made.

CONCLUSIONS OF LAW

1. The City's failure to conduct all required monitoring is a violation of its NPDES permit duly issued pursuant to Section 402(a) of the Federal Water Pollution Control Act. The City is therefore in violation of Section 301(a) of that Act.

ORDER

AND NOW this
hereby ordered that:

8th

day of October 1974, it is

1. Within thirty days of receipt of this order, the City shall submit to the Agency the following information:

- (a) the location of the nearest laboratory capable of analyzing samples from the City's sewage treatment plant for those parameters which the City is not prepared to assess; and
- (b) a schedule by which the City will either
 - (1) acquire the necessary equipment to conduct all necessary laboratory tests required by the permit, or
 - (2) have all necessary tests performed by an outside laboratory.

This schedule is subject to approval by the Agency.

ORIGINAL SIGNED BY

William J. Riley

Stephen R. Wassersug
Director
Enforcement Division

ENVIRONMENTAL PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION III

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CONCURRENCES

SYMBOL ▶							
SURNAME ▶							
DATE ▶							

ENVIRONMENTAL PROTECTION AGENCY

2

ORDER

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This schedule is subject to approval by the Agency.

ORIGINAL SIGNED BY

William J. Riley

Stephen R. Wassersug
Director
Enforcement Division

Non Responsive based on Revised Scope

SYMBOL

SURNAME

DATE

EPA FO

OFFICIAL FILE COPY

3/22 Elaine says S. Northcraft quit; wrote a ltr to
Mayor
4/8 Mayor responded; with form to Co.
Case closed!

STATUTORY AUTHORITY

The Administrator of the Environmental Protection Agency is authorized to conduct the NPDES permit program by the Federal Water Pollution Control Act, 33 U.S.C. §1251, 1342. This authority is delegated to the Regional Administrator by regulation, at 40 CFR 125.5 (as to the issuance of permits) and EPA Order 1260.6, dated September 14, 1973 (as to the enforcement of NPDES permits.) In our Region, the Regional Administrator has redelegated his authority to enforce permits to the Director of the Enforcement Division. (Memorandum of December 13, 1973.)

The Act authorizes us to issue permits to municipalities which require the achievement of the more stringent of secondary treatment or limitations necessary to meet water quality standards, by July 1, 1977. (§§1342(a)(1) and 1311(b)(1)(B) and (C).) Prior to the taking of actions necessary to meet these requirements, we are authorized to impose such conditions as we determine are necessary to carry out the intent of the Act (§1342(a)(1).) The latter requirements are known as "interim conditions."

In the case of New Cumberland, we imposed an interim condition requiring the City to conduct sampling and analysis regarding the following parameters:

- Total Flow
- BOD₅
- Suspended Solids
- Fecal Coliform
- pH.

The City advised us on August 12, 1974, that it was not complying with the sampling and analysis requirement.

The Act authorizes us, on finding that a discharger is in violation of its permit, to either issue an administrative order or bring a civil action (§1319(a)(3).)

We issued an administrative order to New Cumberland on October 8, 1974, directing that the City submit a schedule by which it would initiate sampling and analysis. The City is in violation of this Order.

The Act authorizes us to commence a civil action for appropriate relief, for any violation for which we may issue an order (§1319(b).) The action is to be brought in the District Court of the United States

for the district in which the defendant is located, In the case of a civil action against a municipality, the State in which the municipality is located must be joined as a party, and may be liable for the expenses resulting from the judgment (§1319(e).)

When we initiate a civil suit under the Act, we are directed to request the Attorney General to appear and prosecute the case (§1366.)

Conference: City of New Cumberland & USA

James F. Compagnone, US Attorney
WILLIAM A. KOLIBASH AUSA

Sharon W. Northcraft City Clerk
Kenneth R. Jones Mayor, City of New Cumberland
Ron Wilson ATTY - New Cumberland

Donald Vaughn Cerrone & Vaughn, Inc.
BRIAN WHEELER Reg. Engineer W. Va. Dept. Health

JOHN BUFFINGTON ATTY - EPA
Roy F. Smith Environmental Engineer, EPA
Raymond George EPA - Wheeling - State Condition Enforcement

ENVIRONMENTAL PROTECTION AGENCY

DRAFT

Mayor Kenneth R. Joy
City of New Cumberland
106 Court Street
New Cumberland, West Virginia 26047

Dear Mayor Joy:

This letter is intended to set forth the outcome of the meeting in my office of September 4, 1975, of representatives of the City of New Cumberland, the State Health Department, the Environmental Protection Agency, and myself.

The Environmental Protection Agency will allow a reduction in the interim monitoring requirement for BOD₅, Suspended Solids and Fecal Coliform to twice per month, provided that the municipality takes certain steps to achieve compliance with permit requirements. This change requires modification of the City's NPDES permit, and can be made only after certification of the proposed revision by the State of West Virginia, pursuant to §401 of the Federal Water Pollution Control Act.

New Cumberland has agreed to take the following steps:

- 1) Within thirty days following our meeting (by October 5, 1975), complete arrangements to have all required sampling and analysis done;
- 2) Within sixty days following our meeting (by November 4, 1975), meet with other localities included in the §201 planning area designated by the State of West Virginia,

CONCURRENCES

and either conclude agreements for the funding of the \$201 study, or determine what objections the other localities have to participation in the study;

- 3) Within sixty days following our meeting (by November 4, 1975), submit a Format #5 and subsequent Step 1 application to the West Virginia Department of Natural Resources;
- 4) Report to EPA, at least every two weeks, on the status of the monitoring program, the \$201 grant application, the efforts to restore full primary treatment at the plant, and the efforts to obtain a permanent operator for the plant. This reporting is to continue until all of the above steps have been completed;
- 5) From now on, New Cumberland will comply with General Conditions 9 and 11 (pages 8 and 9) of the permit, regarding the reporting of bypasses of the plant and other instances of noncompliance to EPA.

Please send me a letter, either agreeing to the provisions set forth above, or setting forth your objections, within five days of receipt of this letter.

Sincerely yours,

James F. Companion
United States Attorney

cc: (See attached page)

CONCURRENCES

SYMBOL ▶								
SURNAME ▶								
DATE ▶								

EPA FORM 1320-1

OFFICIAL FILE COPY

ENVIRONMENTAL PROTECTION AGENCY

3

Copies to:

Ronald E. Wilson, City Solicitor
Phillips Building
P. O. Box 638
New Cumberland, West Virginia 26047

Sharon D. Northcraft, City Clerk
City of New Cumberland
106 Court Street
New Cumberland, West Virginia 26047

Donald R. Vaughn
Cerrone & Vaughn, Inc.
401 Main Street
Wheeling, West Virginia 26003

John V. Buffington, Attorney
Enforcement Division
Environmental Protection Agency, Region III
6th and Walnut Streets
Philadelphia, Pennsylvania 19106

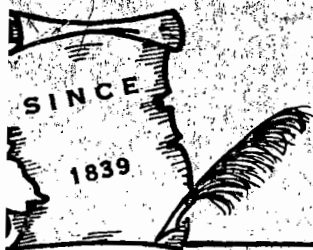
Raymond C. George
Environmental Protection Agency
303 Methodist Building
Wheeling, West Virginia 26003

Mr. Warren H. Means, P.E.
Head, Municipal Wastes Section
West Virginia Department of Natural Resources
Division of Water Resources
1201 Greenbrier Street
Charleston, West Virginia

Non Responsive based on Revised Scope

CURRENCES

OFFICIAL FILE COPY



City of New Cumberland

NEW CUMBERLAND, WEST VIRGINIA 26047
PHONE 304-564-3383

OFFICE OF THE CLERK

October 16, 1975

James F. Companion, Esquire
United States Attorney
Post Office Box 591
Wheeling, West Virginia 26003

Dear Mr. Companion:

Please be advised that the following work has been done in hopes of solving our sewer problems in New Cumberland:

- (1) The plant was put back in operation on October 3rd. We still do not have an operator but do have a couple of leads to look into.
- (2) We have made informal arrangements with the City of Weirton to perform the BOD and the Suspended Solids tests at no charge. The City of Steubenville has agreed to do the testing for the Fecal Coliform at \$12.50 per test. Arrangements for obtaining samples are yet to be made.
- (3) The Water/Sewage Board has met with the Tomlinson Public Service district but no agreements could be made because of a pending proposal to organize a county-wide public service district for sewage of which Tomlinson would become a part of.
- (4) The Board will be meeting on October 30th and at that time a decision will have to be made as to whether to enter into our own project or try to get permission to enter the county system.
- (5) We have notified the State Health Department and the Department of Natural Resources as to the status of operation at our plant and will continue to do so in the future.

Thank you for your concern in both our problems and our progress.

Sincerely,

Sharon D. Northcraft

Sharon D. Northcraft
City Clerk

IN REPLYING REFER TO

JFC/rp

United States Department of Justice

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF WEST VIRGINIA
POST OFFICE BOX 591
WHEELING, WEST VIRGINIA 26003

August 21, 1975

Mayor Kenneth R. Joy
City of New Cumberland
106 Court Street
New Cumberland, W. Va. 26047

Dear Mayor Joy:

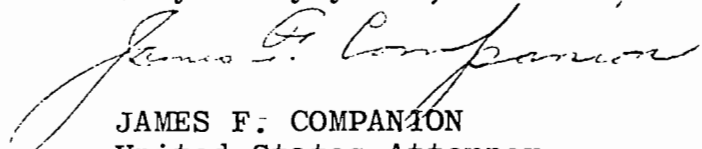
I have been advised by the Environmental Protection Agency that the City of New Cumberland remains in violation of Administrative Order No. 74-242 which was issued to the City of New Cumberland on October 8, 1974. The EPA is required by the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., to refer the violation to me for the institution of legal action if this situation continues.

In order to determine whether this problem can be resolved without recourse to the federal courts, I propose that a meeting be scheduled in my Wheeling office to discuss your City's obligations under the Federal Water Pollution Control Act and possible means of correcting the present violations. I believe that the following individuals should be present: the Mayor, the City Clerk, the City Solicitor, one or more representatives of the City's Water Board, one or more representatives of the City's engineering firm and representatives of EPA. If you believe that others should attend, please feel free to extend an appropriate invitation.

I suggest that this meeting take place in my Wheeling office on Thursday, September 4, 1975 at 10:00 a.m. If that date is not convenient, we can endeavor to work out a mutually convenient time.

Please advise me as soon as possible whether you are agreeable to such a meeting and, if so, whether the suggested date and time are convenient.

Very truly yours,


JAMES F. COMPANTON
United States Attorney

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In Reply Refer to 3EN41

SUBJECT: Step I application for New Cumberland, Hancock Co., DATE: October 31, 1975
West Virginia WV0025119

FROM: Elaine Seneca, Municipal Permits Program Branch 3EN41 ES

TO: John Buffington, Legal Branch 3EN32

A telecon October 31, 1975, with Steve Knop of the West Virginia Municipal Grant Section indicated that a county wide Public Service District has recently been legally constituted by the county court in Hancock Co.. Board members, a chairman, and by-laws have not yet been formed for this new PSD.

Thus, New Cumberland's Step I application will be delayed until the Board is formed and operating since certain joint resolutions with the PSD are necessary for the Step I.

Steve indicated the PSD Board might take up to 6 months to form. Steve will keep me informed of the PSD's progress.

In Reply Refer to 3EN41

Step I application for new Cumberland, Hancock Co.,
West Virginia

October 31, 1975

Elaine Seneca, Municipal Permits Program Branch 3EN41

John Buffington, Legal Branch 3EN32

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IN REPLYING REFER TO

United States Department of Justice

JFC/rp

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF WEST VIRGINIA
POST OFFICE BOX 591
WHEELING, WEST VIRGINIA 26003

September 30, 1975

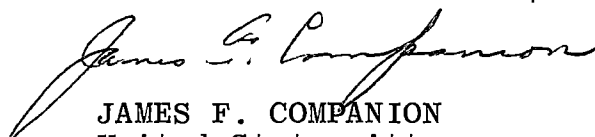
Mr. John V. Buffington, Attorney
Enforcement Division
Environmental Protection Agency
Region III, 6th & Walnut Streets
Philadelphia, Pennsylvania 19106

Dear Mr. Buffington:

Enclosed is a copy of the response from the City of New Cumberland in regard to my letter dated September 15, 1975.

I feel that any further contact with the City should be handled through your office. If I can be of further service in this regard, please advise.

Very truly yours,


JAMES F. COMPANION
United States Attorney

Encl.

cc: Mr. Raymond C. George
W. Va. Permits Coordinator
Environmental Protection Agency
303 Methodist Building
Wheeling, W. Va. 26003

& WILSON
JORDAN & FLOWERS
ATTORNEYS AT LAW

BANK BUILDING
CHESTER, W. VA. 26034
P. O. BOX 252
PHONE 304-387-1033

JAMES A. JORDAN
EDWIN F. FLOWERS
RONALD E. WILSON

September 29, 1975

PHILLIPS BUILDING
NEW CUMBERLAND, W. VA. 26047
P. O. BOX 638
PHONE 304-564-5151

James F. Companion, Esquire
United States Attorney
Post Office Box 591
Wheeling, West Virginia 26003

Re: Town of New Cumberland

Environmental Protection Agency

Dear Mr. Companion:

Your letter of September 15, 1975, addressed to Mayor Kenneth R. Joy has been placed in my hands for attention. I think we have some misunderstanding of the commitment made by the Town of New Cumberland at our conference held on September 4, 1975. I agree that the Town of New Cumberland agreed with the Steps I and II as stated in your letter. I do not agree that the Mayor committed himself by November 4, 1975 to submitting a Format No. V and subsequent Step I application to the West Virginia Department of Natural Resources. Since Step I application requires matching local funds it would be impossible for the Mayor to make that kind of a commitment.

Since our conference the County Commissioners of Hancock County on September 8, 1975, adopted a motion proposing the creation of a county-wide public service district (PSD) for sewage purposes and on October 6, 1975, a public hearing will be held concerning the possible creation of the district.

If the district is created then only one authority, other than the Town of New Cumberland, will be involved with Section 201 Planning and Coordination. Since the new public service district will need time to

R E C E I V E D

SEP 30 1975

U. S. ATTORNEY
Wheeling, W. Va.

9/29/75

organize, I suspect this will further delay a county Step I application. It is also possible that the Town of New Cumberland will petition the new public service district to assume responsibility for authority now assigned to the New Cumberland Water and Sewage Board. We will of course cooperate with the new public service district or Tomlinson in an effort to submit the Step I application and it is also the Mayor's intention to see that the Town continues to report to the EPA concerning the Section 201 Grant Application and the status of the monitoring program and the condition of the primary treatment plant.

Your continued cooperation in this community problem is sincerely appreciated.

With thanks and every good wish,

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ronald E. Wilson", with a long horizontal flourish extending to the right.

Ronald E. Wilson

REW/ce

RECEIVED
LEGAL BRANCH

1975 OCT 6 AM 8 09

U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGION III

IN REPLYING REFER TO

United States Department of Justice

JFC/rp

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF WEST VIRGINIA
POST OFFICE BOX 591
WHEELING, WEST VIRGINIA 26003

September 15, 1975

Mayor Kenneth R. Joy
City of New Cumberland
106 Court Street
New Cumberland, W. Va. 26047

Dear Mayor Joy:

This is to set forth our understanding of the matters discussed at the conference on September 4, 1975 attended by representatives of the City of New Cumberland, the Environmental Protection Agency, the State Health Department and my office.

The EPA has agreed to allow a reduction in the interim monitoring requirement for BOD₅, Suspended Solids and Fecal Coliform to twice per month, provided that the City take certain steps to achieve compliance with permit requirements. This change requires a modification of the City's NPDES permit and can be made only after certification of the proposed revision by the State of West Virginia pursuant to §401 of the Federal Water Pollution Control Act.

The steps which the City of New Cumberland has agreed to take are as follows:

- (1) Within thirty days following our meeting (by October 5, 1975), the City will complete arrangements to have all required sampling and analysis done;
- (2) Within sixty days following our meeting (by November 4, 1975), the City will meet with other localities included in the §201 planning area designated by the State of West Virginia and either conclude agreements for the funding of the §201 study or determine what objections the other localities may have to participation in the study;
- (3) Within sixty days following our meeting (by November 4, 1975), the City will submit a Format #5 and subsequent Step 1 application to the West Virginia Department of Natural Resources;

Mayor Kenneth R. Joy
September 15, 1975

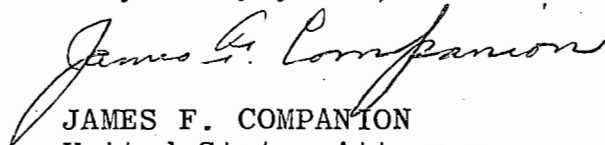
page 2

(4) The City will report to the EPA, at least every two weeks, on the status of the monitoring program, the §201 grant application, the efforts to restore full primary treatment at the plant and the efforts to obtain a permanent operator for the plant. This reporting is to continue until all of the above steps have been completed.

I am also reminding the City to comply with General Conditions 9 and 11 (pages 8 and 9) of the permit regarding the reporting of bypasses of the plant and other instances of noncompliance to EPA. This particular reporting requirement imposes a continuing duty on the City.

Please acknowledge the receipt of this letter and indicate your agreement to the provisions set forth above or any objections thereto at your earliest convenience.

Very truly yours,

A handwritten signature in cursive script, reading "James F. Companion".

JAMES F. COMPANION
United States Attorney

Copies to:

page 3

Ronald E. Wilson, City Solicitor
Phillips Building
P. O. Box 538
New Cumberland, West Virginia 26047

Sharon D. Northcraft, City Clerk
City of New Cumberland
106 Court Street
New Cumberland, West Virginia 26047

Donald R. Vaughn
Cerrone & Vaughn, Inc.
401 Main Street
Wheeling, West Virginia 26003

✓ John V. Buffington, Attorney
Enforcement Division
Environmental Protection Agency, Region III
6th and Walnut Streets
Philadelphia, Pennsylvania 19106

Raymond C. George
Environmental Protection Agency
303 Methodist Building
Wheeling, West Virginia 26003

Mr. Warren H. Means, P.E.
Head, Municipal Wastes Section
West Virginia Department of Natural Resources
Division of Water Resources
1201 Greenbrier Street
Charleston, West Virginia 25301

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LEGAL BRANCH

1975 SEP 17 PM 2 37

U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGION III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION III

In the matter of

: No. 74-242

City of New Cumberland

: ORDER

New Cumberland, West Virginia 26047

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Proceeding under §309(a)(3) Federal
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CONCLUSIONS OF LAW

1. The City's failure to conduct all required monitoring is a violation of its NPDES permit duly issued pursuant to Section 402(a) of the Federal Water Pollution Control Act. The City is therefore in violation of Section 301(a) of that Act.

ORDER

AND NOW this *8th* day of *October*, 1974, it is hereby ordered that:

1. Within thirty days of receipt of this order, the City shall submit to the Agency the following information:

- (a) the location of the nearest laboratory capable of analyzing samples from the City's sewage treatment plant for those parameters which the City is not prepared to assess; and
- (b) a schedule by which the City will either
 - (1) acquire the necessary equipment to conduct all necessary laboratory tests required by the permit, or
 - (2) have all necessary tests performed by an outside laboratory.

This schedule is subject to approval by the Agency.

ORIGINAL SIGNED BY

William J. Riley

Stephen R. Wassersug
Director
Enforcement Division

1/17 Elaine will talk to Stagan

Sharon N

(304) 343-6181

564-3383

Meeting of 9/4/75

(b) (5)

Cong. Mullan

Meredith

Robb

202 225-4172

to the Administrator, for
the existing discharges on the
side:

the physical and chemical

Sharon N:
FIS (304) 343-
6131
464-3383

(b) (5)

ENVIRONMENTAL PROTECTION AGENCY

James Companion
U.S. Attorney for Northern District
of West Virginia
P. O. Box 591
Wheeling, West Virginia 26003

AUG 15 1975

Dear Mr. Companion:

Pursuant to our meeting with you on July 15, I am sending you the following items:

- (a) copies of all documents relevant to the New Cumberland case;
- (b) a summary of the compliance status of 13 municipalities in the Northern District of West Virginia which we know to be having difficulty meeting permit requirements, or otherwise in violation;
- (c) a draft letter to Mayor Joy; and
- (d) a statement of the law of the case.

Ray George advises me that he knows the status of the Ohio River Steel and Chemical Companies that you asked about, and will call you to discuss them. We will be glad to provide a more formal presentation if you desire it.

I regret that it has taken me a month to get this material together for you - unfortunately our meeting occurred when I was in the midst of a quite hectic schedule.

Please let me know if there is any more information which you need before scheduling the meeting with New Cumberland. If you wish to discuss the matter, I can be reached at (215) 597-8918.

We greatly appreciate your cooperation in this matter.

Sincerely yours,

3EN30 Buffington/jcm:8-15-75		CONCURRENCES		John V. Buffington	
SYMBOL ▶				Attorney	
SURNAME ▶	Enclosures			Enforcement Division	
DATE ▶					

ENVIRONMENTAL PROTECTION AGENCY

STATUTORY AUTHORITY

The Administrator of the Environmental Protection Agency is authorized to conduct the NPDES permit program by the Federal Water Pollution Control Act, 33 U.S.C. §1251, 1342. This authority is delegated to the Regional Administrator by regulation, at 40 CFR 125.5 (as to the issuance of permits) and EPA Order 1260.6, dated September 14, 1973 (as to the enforcement of NPDES permits.) In our Region, the Regional Administrator has redelegated his authority to enforce permits to the Director of the Enforcement Division. (Memorandum of December 13, 1973.)

The Act authorizes us to issue permits to municipalities which require the achievement of the more stringent of secondary treatment or limitations necessary to meet water quality standards, by July 1, 1977 (§§1342(a)(1) and 1311(b)(1)(B) and (C).) Prior to the taking of actions necessary to meet these requirements, we are authorized to impose such conditions as we determine are necessary to carry out the intent of the Act (§1342(a)(1).) The latter requirements are known as "interim conditions."

In the case of New Cumberland, we imposed an interim condition requiring the City to conduct sampling and analysis regarding the following parameters:

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The City advised us on August 12, 1974, that it was not complying with the sampling and analysis requirement.

The Act authorizes us, on finding that a discharger is in violation of its permit, to either issue an administrative order or bring a civil action (§1319(a)(3).)

We issued an administrative order to New Cumberland on October 8, 1974, directing that the City submit a schedule by which it would initiate sampling and analysis. The City is in violation of this Order.

The Act authorizes us to commence a civil action for appropriate relief, for any violation for which we may issue an order (§1319(b).) The action is to be brought in the District Court of the United States

CONCURRENCES

SYMBOL							
SURNAME							
DATE							

ENVIRONMENTAL PROTECTION AGENCY

for the district in which the defendant is located. In the case of a civil action against a municipality, the State in which the municipality is located must be joined as a party, and may be liable for the expenses resulting from the judgment (§1319(e).)

When we initiate a civil suit under the Act, we are directed to request the Attorney General to appear and prosecute the case (§1366.)

3EN30 Buffington/jcm:8-15-75		CONCURRENCES					
SYMBOL							
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EPA FORM 1320-1

OFFICIAL FILE COPY

ENVIRONMENTAL PROTECTION AGENCY

Mayor Kenneth R. Joy
City of New Cumberland
106 Court Street
New Cumberland, West Virginia 26047

Dear Mayor Joy:

I have been advised by the Environmental Protection Agency that the City of New Cumberland remains in violation of the Administrative Order, number 74-242, which was issued to the City of New Cumberland on October 8, 1974. EPA is required by the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., to refer the matter to me for the institution of legal action if this situation continues.

In order to determine whether the matter can be resolved without recourse to the federal courts, I propose a meeting in my office to discuss the City's obligations under the Federal Water Pollution Control Act, and possible means of terminating the present violations. I believe that the following parties should be present: yourself, as Mayor, the City Clerk, the City Attorney, one or more representatives of the City's water board, one or more representatives of the City's engineering firm, and one or more representatives of EPA. If you believe that others should be invited, you are free to do so.

I propose that this meeting take place in my office on _____
If that date is not convenient, we will endeavor to work out a mutually agreeable one.

CONCURRENCES

SYMBOL								
SURNAME								
DATE								



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

IRA S. LATIMER, JR.
Director

November 24, 1970

The Honorable Gene Cook
Mayor of Man
Logan County
Man
West Virginia 25635

Re: Abatement of Stream Pollution
Program for Municipalities
and Public Service Districts

Dear Mayor Cook:

All municipalities and Public Service Districts not having sew treatment plants will be required to provide secondary facilities, a minimum, on or before January 1, 1975.

All municipalities and Public Service Districts which now provide primary treatment will be required to upgrade existing primary facilities to secondary type, as a minimum, on or before January 1, 1975.

Public Law 660 funds are now available to your City or Public Service District for this expansion. Due to the annual increase in the construction cost index, it will be economically more feasible proceed with your secondary treatment facilities construction as soon as possible.

Please inform us as to your intentions after you have had an opportunity to discuss this matter with your sanitary board and consulting engineers.

With best wishes I am,

Very truly yours,

WATER RESOURCES DIVISION

Harry H. Shelton, Head
Municipal Wastes Section

cc: Dr. N. H. Dyer, SHD
Logan County Health Dept.
Joe Holly, Supv., WRD, Beckley

In Reply
Refer to 3EN42

July 1, 1975

Re: New Cumberland
NPDES Permit WV 0025119

Mr. Warren Means, Chief
Municipal Waste Section
West Virginia Department
of Natural Resources
Division of Water Resources
1201 Greenbrier Street
Charleston, West Virginia 25311

Dear Mr. Means:

The City of New Cumberland is in violation of the NPDES permit issued June 28, 1974 in that the City has failed to submit quarterly monitoring reports and has failed to complete a feasibility study by December 31, 1974 as required in the permit. An administrative order issued by this Agency has not resulted in compliance with permit conditions. I am writing your office to request the following information prior to proceeding with further enforcement action:

1. Is information on plant operation available which has not been documented in EPA/State O&M inspections?
2. What are current State requirements for a testing program and for treatment plant operator qualifications for this particular plant?
3. Was the City placed on FY '73 or other earlier priority/project lists and failed to apply for necessary funding?
4. New Cumberland does not appear on the FY '76 priority list. Therefore, can the City receive construction grant funding after July 1, 1975, and would a Step 1 or Step 2 application be required?

It is my understanding that New Cumberland was on the FY '74 priority list for a Step 2 grant and was carried over to the FY '75 list, but was subsequently deleted based on John Hall's letter of January 29, 1975 (attached). Although New Cumberland does not appear on the proposed FY '76 priority list, recent correspondence to EPA from the City's consulting engineer, Cerrone and Vaughn, indicates that the City had been designated as a lead applicant in a 201 planning area and would be submitting a Step 1 grant application. There appears to be some confusion which needs clarification to determine exactly what the City should do to meet the permit compliance schedule requirements.

Your cooperation in this matter is appreciated. If you have any questions, please contact myself on 597-2977 or Harry Harbold on 597-3884.

Sincerely yours,

Stanley L. Laskowski, Chief
Pa. - W. Va. Municipal Section

cc: John Buffington (3EN32)



City of New Cumberland

NEW CUMBERLAND, WEST VIRGINIA 26047
PHONE 304-564-3383

OFFICE OF THE CLERK

June 13, 1975

United States Environmental Protection Agency
Region III
6th and Walnut Streets
Philadelphia, Pennsylvania 19106

Attention: John V. Buffington, Attorney
Enforcement Division

Dear Mr. Buffington:

In response to your letter of May 21, 1975 I would like to submit the following answers to your questions:

- (1) Inquiries for local laboratories to do our testing were made by telephone; in Weirton a [redacted] was questioned and his phone number is [redacted]; in Steubenville a Mr. [redacted] was contacted and his phone number is [redacted] and in East Liverpool an unknown operator was contacted and he can be reached at [redacted] Wheeling was not contacted as we felt it was too far away.
- (2) The private laboratory we talked with is the [redacted] on Short Creek Road in Wheeling and their phone number is [redacted].
- (3) I don't really feel that any pertinent information has been left out of any of our previous correspondence.
- (4) Five hundred homes are presently being served by the City sewer system.
- (5) A copy of our sewer rates are attached.
- (6) The bonded indebtedness of our system is approximately \$208,000.
- (7) A copy of last year's financial statement is attached. We have no set budget for our sewer system.

- (8) I am not sure of your question #8 regarding outstanding orders issued by the Department of Natural Resources--- but as far as I know there are known except that the City go into Secondary Sewage Treatment by July 1, 1976.
- (9) The City as of this date has not submitted a Step I grant application as the contract submitted by our engineer was being reviewed by our city attorney. I was notified today that the attorney is to recommend that the contract be signed as is and I was further advised by our engineer that it would take six weeks to complete the application.

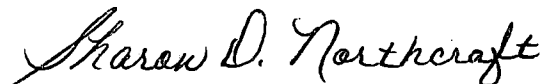
You will notice by our financial statement that there is no over-abundance of funds. Discussion had been held concerning using Revenue Sharing funds to purchase the necessary equipment but this idea had to be abandoned because of a \$9,000.00+ cut in our allocation.

We are not trying to get out of meeting your requirements but are seriously stumped as to how we can financially handle these problems at this time.

I would like to request that if at all possible that we try to set up a meeting--I feel that if we could sit down and go over this problem step by step together that we might be able to reach a feasible solution to this problem.

Thank you for the time and trouble you have already given to help us work things out.

Sincerely,



Sharon D. Northcraft
City Clerk

RECEIVED
LEGAL BRANCH

1975 JUN 17 PM 12 34

U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGION III

Sewer Funds

1973-1974 Financial Report

	1	2	3	4	5	6
Previous Balance	34323					1
Current payment	3312628					2
Less	200-					3
Total Money	3366951					4
Expenditures:						5
Postage	94-					6
Jack Terhise	1800-					7
John P. Place, Inc.	14722					8
Phillips Hardware	30476					9
United Rent-A-Car	12548					10
Korman D. Terrell	375-					11
Morgan Business	14539					12
K. E. L. Co.	61-					13
U. S. Tool & Supply	4520					14
Zep Mfg. Co.	37835					15
Bowling	14552					16
Asphalt Oil	22988					17
S. L. & H. Plumbing	31306					18
Veto Mfg. Co.	1192					19
Martin Chemical	46823					20
Lab Chemical Co.	115-					21
Taylor Chemical	1260					22
Van Hardt Equip	11232					23
Robert Nichols	200-					24
Petty Cash	5559					25
Wasson Courier	11865					26
D. & L. Sanitation	68740					27
Ferguson Inc. Co.	9-					28
National Ins.	9-					29
K. B. Electric	3180					30
Sagmeister Auto	90-					31
State Printing Plant	1324524					32
Morganville Bros	32273					33
Bob Kirkpatrick	18-					34
Craig Truckhouse	825					35
Forest Security	46152					36
Black Mesa Cons	13490					37
Cove Valley Local	222					38
						39
						40
Capital				148-		1
Scott Lumber				2030		2
Audit - 1972-73				500-		3
Y. & C. Company				28-		4
Weinstein Distributors				2880		5
Payroll Fund				651756		6
Total:				2819384		7
Checks taken and including numbers 1170 to 1289						8
Reconciliation of Balance						9
On deposit				692048		10
Deposit in transit				56039		11
Outstanding checks				748087		12
				203520		13
				549567		14
Non-sufficient funds				40-		15
				548567		16

PS Form 3811, Nov. 1973

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1-3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☒ Show to whom and date delivered..... 15¢
 - ☐ Show to whom, date, & address of delivery.. 35¢
 - ☐ DELIVER ONLY TO ADDRESSEE and show to whom and date delivered..... 65¢
 - ☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:
Mayor Kenneth R. Fry
City of New Cumberland 106 Court St.
New Cumberland, W. Va. 26047

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	049121	

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE

4. *William A. Eversley*

DATE OF DELIVERY <i>5/27/75</i>	POSTMARK
------------------------------------	----------

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:	CLERK'S INITIALS

3E7130-Buxington
UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

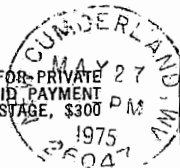
- Complete items 1 and 2 on reverse side.
- Moisten gummed ends and attach to back of article.

**RETURN
TO**



U.S. Environmental Protection Agency
601 Walnut St.
Phila., Pa. 19106

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300 PM



ENVIRONMENTAL PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION III

In the matter of : No. 74-242

City of New Cumberland : ORDER

New Cumberland, West Virginia 26047 :

Proceeding under §309(a)(3) Federal :

Water Pollution Control Act :

FINDINGS OF FACT

1. On June 28, 1974, the Environmental Protection Agency, Region III (the "Agency") issued an NPDES permit, No. WV 0025119, to the City of New Cumberland, West Virginia (the "City") for a discharge to the Ohio River from a facility known as the New Cumberland Sewage Treatment Plant. This permit became effective on July 28, 1974.
2. On page 5 this permit requires the City to monitor the operation and efficiency of all treatment and control facilities on an average monthly basis, and to submit to the Agency reports of these values, on a quarterly basis. Quarterly reports are required for periods beginning on the first day of April, July, October, and January.
3. On page 6 this permit lists the parameters to be monitored and reported by the City. They are:

Total Flow
BOD/5
Suspended Solids
Fecal Coliform
pH

4. In a letter dated August 12, 1974, Sharon Northcroft, City Clerk, advised the Agency that the City is at present unable to comply with the monitoring requirements set by the permit, due to lack of equipment. Ms. Northcroft stated the City's intention of purchasing such equipment, but gave no date by which the purchase would be made.

CONCLUSIONS OF LAW

1. The City's failure to conduct all required monitoring is a violation of its NPDES permit duly issued pursuant to Section 402(a) of the Federal Water Pollution Control Act. The City is therefore in violation of Section 301(a) of that Act.

CONCURRENCES

SYMBOL ▶							
SURNAME ▶							
DATE ▶							

8 8
Sewer customers are billed quarterly based on their water use by the following rates:

First 6,000 gallons \$1.50 per thousand with the minimum being \$9.00
Next 9,000 gallons \$1.20 per thousand
Next 15,000 gallons \$1.10 per thousand
All over 30,000 gallons \$1.00 per thousand

**STICK POSTAGE STAMPS TO ARTICLE TO COVER POSTAGE (first class or airmail),
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub on the left portion of the address side of the article, leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub on the left portion of the address side of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified-mail number and your name and address on a return receipt card, Form 3811, and attach it to the back of the article by means of the gummed ends. Endorse front of article RETURN RECEIPT REQUESTED.
4. If you want the article delivered only to the addressee, endorse it on the front DELIVER TO ADDRESSEE ONLY. Place the same endorsement in line 2 of the return receipt card if that service is requested.
5. Save this receipt and present it if you make inquiry.

No. 049121

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO <i>Mayor Kenneth R. Joy</i>		POSTMARK OR DATE
STREET AND NO. <i>City of New Cumberland—106 Court St.</i>		
P.O. STATE AND ZIP CODE <i>New Cumberland, W. Va. 26047</i>		
OPTIONAL SERVICES FOR ADDITIONAL FEES		
RETURN RECEIPT SERVICES	1. Shows to whom and date delivered	15¢
	With delivery to addressee only	65¢
	2. Shows to whom, date and where delivered ..	35¢
	With delivery to addressee only	85¢
DELIVER TO ADDRESSEE ONLY		50¢
SPECIAL DELIVERY (extra fee required)		

PS Form
Apr. 1971 3800

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See other side)

★ GPO : 1974 O - 551-454

ENF 4-3

74-242

May 21, 1975

In reply refer to: 3EN30

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mayor Kenneth R. Joy
City of New Cumberland
106 Court Street
New Cumberland, West Virginia 26047

Dear Mayor Joy:

Thank you for your letter of April 29, 1975, providing some of the information required by Administrative Order 74-242. Since you have not provided us with a schedule by which the City will arrange to have all necessary testing done, the City remains in violation of the Order NPDES permit No. WV 0025119, and Section 301(a) of the Federal Water Pollution Control Act.

Our Order was designed to allow the City to determine for itself what course was best adapted to terminate the violation, subject to our approval. Since the City has proposed no such course, we must now proceed to determine what steps must be taken for ourselves, and to require the City to take them. The record before us is not yet sufficiently complete to enable us to make this decision, so I must ask you for more information. The City's response to the following requests for information will be taken into account in making our determination as to what must be done. Where necessary, we will gather more information for ourselves.

1) Did the City send written inquiries to East Liverpool and Steubenville, Ohio, Wheeling and Weirton, West Virginia, regarding their willingness to do the required tests and their cost? If so, please provide us with copies of your letters and the responses. If contact was made by telephone, please provide names and telephone numbers of the persons called.

2) Please provide the name, address, and telephone number (if known) of the private laboratory in Wheeling, and copies of any correspondence.

3) Please provide all pertinent information which was obtained in telephone conversations and is not reflected in existing correspondence.

4) How many homes are served by the City sewer system?

5) Please provide a copy of the rate structure for sewer service.

6) What is the City's bonded indebtedness?

7) Please provide a copy of the City budget for the current fiscal year.

8) Please provide copies of all outstanding orders issued by the Department of Natural Resources to the City of New Cumberland.

9) Has the City submitted a Step I grant application to the State? If not, please advise as to further steps that must be completed prior to submitting the application, and the time frame involved.

You may, if you wish, submit any additional information which you believe affects the City's ability to pay for the monitoring program required by its permit.

Please send all of the requested information to me at the above address within fifteen days of receipt of this letter. If you have any questions, please feel free to call me at (215) 597-9840.

Sincerely yours,

John V. Buffington
Attorney
Enforcement Division

cc: Donald R. Vaughn ✓

James F. Companion
U. S. Attorney

bcc: Harry Harbold ✓
Ray George ✓
Sharon Northcraft ✓

Non Responsive based on Revised Scope 21 May 75

CONCURRENCES

SYMBOL ▶

SURNAME ▶

DATE ▶

EPA FORM

Non Responsive based on Revised Scope

OFFICIAL FILE COPY

**CERRONE & VAUGHN, INC.**

— CONSULTING ENGINEERS —

401 Main Street - Wheeling, W. Va. 26003

Area Code 304 - 232-5550

May 1, 1975

Mr. John B. Buffington
Enforcement Division
Environmental Protection Agency
Region 3
6th & Walnut Street
Philadelphia, Pa. 19106

RE: City of New Cumberland
NDPES Permit Testing
Requirements.

Dear Mr. Buffington:

At the request of Sharon Northcraft, Clerk, City of New Cumberland, W. Va. we are confirming some of our thoughts that we had previously passed on to the City to your office.

At the request of the City following the receipt of the first correspondence from your Agency, regarding the testing procedures the City must perform in order to meet the requirements of the discharge permit, we offered several methods of accomplishing the testing. Our first suggestion was to contact a local laboratory at one of the large municipal treatment plants adjacent to the City of New Cumberland and have them perform the tests on a monthly basis. This, however, proved to be a rather expensive and not a reasonable solution since the cities did not want to become involved in this work.

The second solution was to purchase the equipment and construct a new laboratory and hire an operator trained in this type of laboratory work to perform the tests. This new laboratory construction and additional lab requirements of the operator are necessary since the present operator was not capable of performing fecal coliform tests along with the BOD tests at this particular plant. Further there are no laboratory facilities or space for performing these tests in the present building. This would necessitate construction of a separate building which will be rather costly and in our opinion, wasteful of funds.

New Cumberland has been designated as lead applicant in the 201 planning area for the general area surrounding New Cumberland. This has been designated by the Dept. of Natural Resources, State of W. Va., as the area to be studied and New Cumberland will be submitting a Step I Grant Application for this planning and future construction of the required facilities.

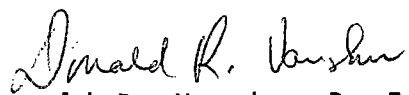
John B. Buffington
May 1, 1975
Page 2

As a result of this overall type of system, New Cumberland will in all probability be constructing a rather large and adequate treatment facility to handle not only the City of New Cumberland waste but also that of New Cumberland Heights and Tomlinson Public Service District.

With this in mind, we suggested to the City that they contact the W. Va. Dept. of Natural Resources to advise them that the proposed sewerage improvements project for the City of New Cumberland, (extend the treatment to secondary and expand treatment capacity to include the outlying areas) will in fact include an adequate laboratory to perform these services. In the meantime we requested that they advise your office that a waiver be requested to delete the requirements of the testing at this time.

We trust this meets with your approval.

Very truly yours,
CERRONE & VAUGHN, INC.


Donald R. Vaughn, P. E.

DRV:ds

cc: City of New Cumberland

City of New Cumberland

NEW CUMBERLAND, WEST VIRGINIA 26047
Phone: 304-564-3383

April 29, 1975

Mr. John V. Buffington
Enforcement Division
Environmental Protection Agency
Region III
6th and Walnut Streets
Philadelphia, Pennsylvania 19106

Re: E. P. A. Order #74-242 dated October 7, 1974.

Dear Mr. Buffington:

In answer to the above mentioned order I would like to submit the following information:

- (a) The nearest laboratory capable of performing the tests which were recently required would be in Weirton, W. Va. Other laboratories available in the area are East Liverpool, Ohio, Steubenville, Ohio, and Wheeling, West Virginia. There is also a private laboratory near the City of Wheeling which would be able to run these tests.
- (b) As for a proposed schedule as to when the City will acquire the necessary equipment to conduct all necessary tests required by our permit--the City is presently considering the orders issued by the Department of Natural Resources to upgrade treatment facilities to provide secondary treatment to those discharges occurring at New Cumberland. The City is now providing primary treatment to its sewer discharges and will consider expanding to secondary treatment whenever funding and engineering work has been completed. A contract is now being negotiated with the Cerrone and Vaughn Engineering Firm of Wheeling for the Step I and Step II phases of secondary sewage treatment plans. It now appears that the fiscal year of 1977 or sooner be designated as our date for completing the above work.

As for having all necessary tests performed by an outside laboratory--the nearest laboratory, in Weirton, has quoted a cost of approximately \$300.00 per month. It is our opinion that this \$300.00 per month would provide a hardship on the City's already limited budget.

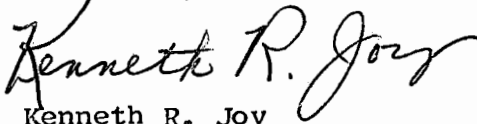
Many other problems have arisen since the issuance of this order: We have just received the resignation of our plant operator which will be effective May 1, 1975; If we were to purchase the equipment necessary to perform these required tests we have no available facility to keep this equipment or for the actual work in performing the tests.

With all the problems facing us at this time we would like permission to continue testing procedures we have practiced in the past until such time as we enter into the secondary treatment program at which time all of the necessary equipment and facilities will be available to meet these testing requirements.

Mr. Buffington, at the present time the above is our only suggestion. We would like to request that you review the above information and offer your suggestions as to how to solve our new problem--meeting the E. P. A. Order #74-242 testing requirements.

I hope that all of your questions have been answered adequately and that if I can be of any further help you will feel free to call on me.

Sincerely,



Kenneth R. Joy
Mayor

Copies to: James F. Companion, United States Attorney
Edgar Henry, Department of Natural Resources
Ronald E. Wilson, City Solicitor

RECEIVED
LEGAL BRANCH

1975 MAY 1 PM 2 14

U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGION III

IN REPLYING REFER TO

JFC/rp

United States Department of Justice

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF WEST VIRGINIA
POST OFFICE BOX 591
WHEELING, WEST VIRGINIA 26003

April 24, 1975

Mr. Ronald E. Wilson
City Solicitor
P. O. Box 638
Phillips Building
New Cumberland, W. Va. 26047

Re: Administrative Order - City of New Cumberland


Dear Mr. Wilson:

This is to acknowledge your letter dated April 18, 1975.

It is agreeable with my office that the City of New Cumberland be given a reasonable period of time to submit the information requested in the Order of the Environmental Protection Agency dated October 8, 1974. I have conferred with John Buffington of EPA's Philadelphia office who suggests that an additional two-week period of time should be sufficient to comply with the Order.

I will therefore refrain from taking any action as set forth in my letter dated April 4, 1975, unless the City fails to comply with the Order. Please advise me by May 12, 1975 if you anticipate any problems in providing the requested information.

Very truly yours,


JAMES F. COMPANION
United States Attorney

ccs:

✓ John V. Buffington
Raymond C. George

RECEIVED
LEGAL BRANCH

1975 APR 25 PM 3 57

U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGION III

JORDAN & FLOWERS

ATTORNEYS AT LAW

BANK BUILDING
CHESTER, W. VA. 26034
P. O. BOX 252
PHONE 304-387-1033

JAMES A. JORDAN
EDWIN F. FLOWERS
RONALD E. WILSON

Reply to:
PHILLIPS BUILDING
NEW CUMBERLAND, W. VA. 21
P. O. BOX 838
PHONE 304-564-5151

April 18, 1975

R E C E I V E
APR 19 1975

U. S. ATTORNEY
Wheeling, W. Va.

James F. Companion
United States Attorney
Northern District of West Virginia
Post Office Box 591
Wheeling, West Virginia 26003

Re: Administrative Order - City of
New Cumberland

Dear Mr. Companion:

Mayor Kenneth Joy has brought your letter of April 4, 1975 concerning the town's violation of the Federal Water Pollution Control Act to my attention. I have advised the Mayor of the seriousness of the matter and he is attempting to comply with the information ordered in the October 8, 1974 Order.

I respectfully request that no action be taken for a reasonable period of time to give the town the opportunity to submit the requested information.

Please advise me of your position in this matter.

Sincerely,

Jordan & Flowers



Ronald E. Wilson
City Solicitor

REW:df

IN REPLYING REFER TO

United States Department of Justice

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF WEST VIRGINIA
POST OFFICE BOX 591
WHEELING, WEST VIRGINIA 26003

April 4, 1975

Kenneth Joy, Mayor
City of New Cumberland
106 Court Street
New Cumberland, West Virginia 26047

Dear Mayor Joy:

On October 11, 1974, the Office of the U. S. Marshal for the Northern District of West Virginia served an Administrative Order upon the City of New Cumberland, directing the City to submit to the U. S. Environmental Protection Agency certain information relating to compliance with a National Pollutant Discharge Elimination System (NPDES) permit which had been issued to the city.

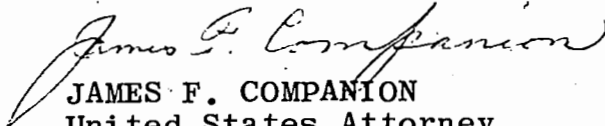
This Order was issued by EPA following the Agency's receipt of notification from the City that it was unable to comply with the permit. A copy of the Order is enclosed.

This letter is to advise you that my office is obligated to undertake legal action against any person or municipality responsible for a discharge of pollutants into the waters of the United States who fails to comply with the provisions of a properly issued NPDES permit. Since you are already in violation of the thirty-day deadline specified in the Administrative Order, EPA has referred the matter to my office so that we can prepare for prosecution under Section 506 of the Federal Water Pollution Control Act.

For your information, Section 309 of the Act provides that each day of willful or negligent violation of a permit condition constitutes a separate criminal offense. Each such offense is punishable by a fine of up to \$25,000.

I urge your cooperation in this matter. If you should have any questions, please contact John Buffington, Esq., at the Philadelphia office of the EPA at (215) 597-9840.

Very truly yours,


JAMES F. COMPANION
United States Attorney

JFC:hlw
Encl.

ENVIRONMENTAL PROTECTION AGENCY

MAR 31 1975

ENF 4-3 74-242

In reply refer to: 3EN32

James F. Companion, Esq.
United States Attorney
P. O. Box 591
Wheeling, West Virginia 26003

Dear Mr. Companion:

The City of New Cumberland, West Virginia, is in violation of an Administrative Order issued by this office on October 8, 1974. We would very much appreciate your assistance in requiring the city to comply.

The City Clerk of New Cumberland wrote to us on August 12, 1974, stating that the city did not have the capability to do the sampling and testing required by the NPDES permit which we had issued. After determining that the monitoring program which we had established in the permit was the minimum which would be acceptable, we issued an Order, directing the city to investigate the possibility of employing an outside laboratory to do the work, and submit its findings to us. Our thought was that if the city undertook a good faith effort to resolve its problem and was physically unable to do so, we would try to help them resolve their predicament.

John Buffington of this Branch called the City Clerk, Sharon Northcraft, on February 27, 1975, to find out why the city had not complied with the Order. Ms. Northcraft stated that she had made the necessary inquiries and had some figures on what a sampling and testing program would cost. She said that there was no likelihood that the city could come up with the money. John suggested that she submit the information she had and include an explanation of the funding problem in some detail, so that we could decide what to do. Ms. Northcraft readily agreed to do this.

On March 6, however, Ms. Northcraft called John and advised him that the Mayor had instructed her not to cooperate with us.

We believe that this situation calls for a letter from you to the Mayor, advising him of the penalty for wilful violation of the FWPCA. We are enclosing a ~~draft letter~~ ^{draft letter} for your consideration. We tried to so word it as to put the responsibility squarely on the Mayor's shoulders without aggravating the existing conflict between Mayor and City Clerk.

SYMBOL

SURNAME

DATE

7/13/6
City of New Cumberland

NEW CUMBERLAND, WEST VIRGINIA 26047
Phone: 304-564-3383

August 12, 1974

U. S. Environmental Protection Agency
Region III
Permits Application Section
6th & Walnut Streets
Philadelphia, Pennsylvania 19106

Attention: Joe Galda

Dear Sir:

*See memo
to Mr. Galda
8/13/74*
In going over the forms and letters from your office dated June 28, 1974 we have found that the testing requirements listed are beyond our present capabilities.

We would therefore like to request that less stringent requirements be established until such time as we can make arrangements to purchase the necessary testing equipment. If possible we would also like to request that a representative of your office meet with our operator to discuss what equipment will be necessary and the testing procedures that are to be used.

Thank you for your prompt attention in this matter.

Sincerely,

Sharon Northcraft
Sharon Northcraft
City Clerk

Harbold 3884

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IN REPLYING REFER TO

United States Department of Justice

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF WEST VIRGINIA
POST OFFICE BOX 591
WHEELING, WEST VIRGINIA 26003

June 9, 1975

Mr. John V. Buffington
Attorney
Enforcement Division
U. S. Environmental Protection Agency
Region III
6th and Walnut Streets
Philadelphia, Pennsylvania 19106

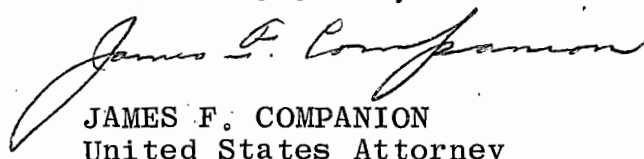
Re: 3EN30

Dear Mr. Buffington:

This is to acknowledge your letter dated June 3, 1975.

I agree that a meeting according to the timing which you suggest would be helpful. I shall look forward to hearing from you when or if it becomes necessary to schedule such a meeting.

Very truly yours,


JAMES F. COMPANION
United States Attorney

JFC:hlw

RECEIVED
LEGAL BRANCH

1975 JUN 12 PM 12 56

U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGION III

Harbold 3884

FPS (304) 343-6181

564-3383

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ENVIRONMENTAL PROTECTION AGENCY

74-242

June 3, 1975

In reply refer to: 3EN30

James F. Companion
United States Attorney
P. O. Box 591
Wheeling, West Virginia 26003

Dear Mr. Companion:

Thank you for your assistance in impressing upon the Mayor of New Cumberland the need for the City to comply with our Administrative Order. The City responded with a letter dated April 29, which lists some available testing laboratories and costs.

Mayor Joy's letter is not fully responsive, in that it does not commit the City to any particular course which would bring the City into compliance by a certain date. In order to determine what course of action to adopt in the light of all the circumstances, we have sent the City a letter specifying information which we need (copy enclosed). If the City sends a satisfactory response, we plan to proceed administratively until such time as we reach an impasse with the City. If the requested information is not provided, we may ask you to institute suit under Section 309 of the Federal Water Pollution Control Act.

In order to insure that we do not treat small municipalities more rigorously than large ones, we have undertaken a review of the compliance status of the eight largest cities in the Northern District of West Virginia. Our choice of cities was made by the crude method of reference to a road map. If you have other suggestions, we would be glad to hear them.

Briefly stated, our expectations regarding the larger cities are as follows:

Clarksburg-additional information has been requested.
Fairmont-unclear; Section 308 letter to be sent to get the necessary information.
Morgantown-probable order to submit missing reports.
Parkersburg-additional information has been requested.

CONCURRENCES

SYMBOL								
SURNAME								
DATE								

ENVIRONMENTAL PROTECTION AGENCY

2

Weirton-probably in compliance.
 Wheeling-an Order has been drafted.
 Martinsburg-probable Order to submit missing reports.
 Moundsville-probable Order to conduct monitoring re-
 quired by permit and submit missing reports.

We are also preparing orders to three smaller cities in the Northern District: Charles Town, Follansbee and McMechen.

It seems probable that some of these cases will defy resolution through our administrative processes, as these municipalities are now reaching the point where they must either expend substantial sums of money on pollution abatement, or violate the permits which we have issued. We are, accordingly, attempting to structure our administrative procedures so as to lay a firm groundwork for possible litigation.

We believe that at some point it would be productive for the attorneys handling cases in your district to meet with you, so as to insure that we fully understand your needs in the event that we must ask you to institute suit. Perhaps the best time for such a meeting would be as soon as possible after it becomes clear in some particular case that all of our administrative remedies are exhausted.

Please let us know whether you think such a meeting would be useful, and if so, whether you agree as to the timing. If you would like to discuss these cases informally, I can be reached at (215) 597-8918.

Thank you again for your cooperation in enforcing federal environmental statutes.

Sincerely yours,

John V. Buffington
 Attorney
 Enforcement Division

CONCURRENCES								
SYMBOL ▶								
SURNAME ▶								
DATE ▶								

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SUBJECT: New Cumberland, West Virginia (WV 0025119)

DATE: May 9, 1975

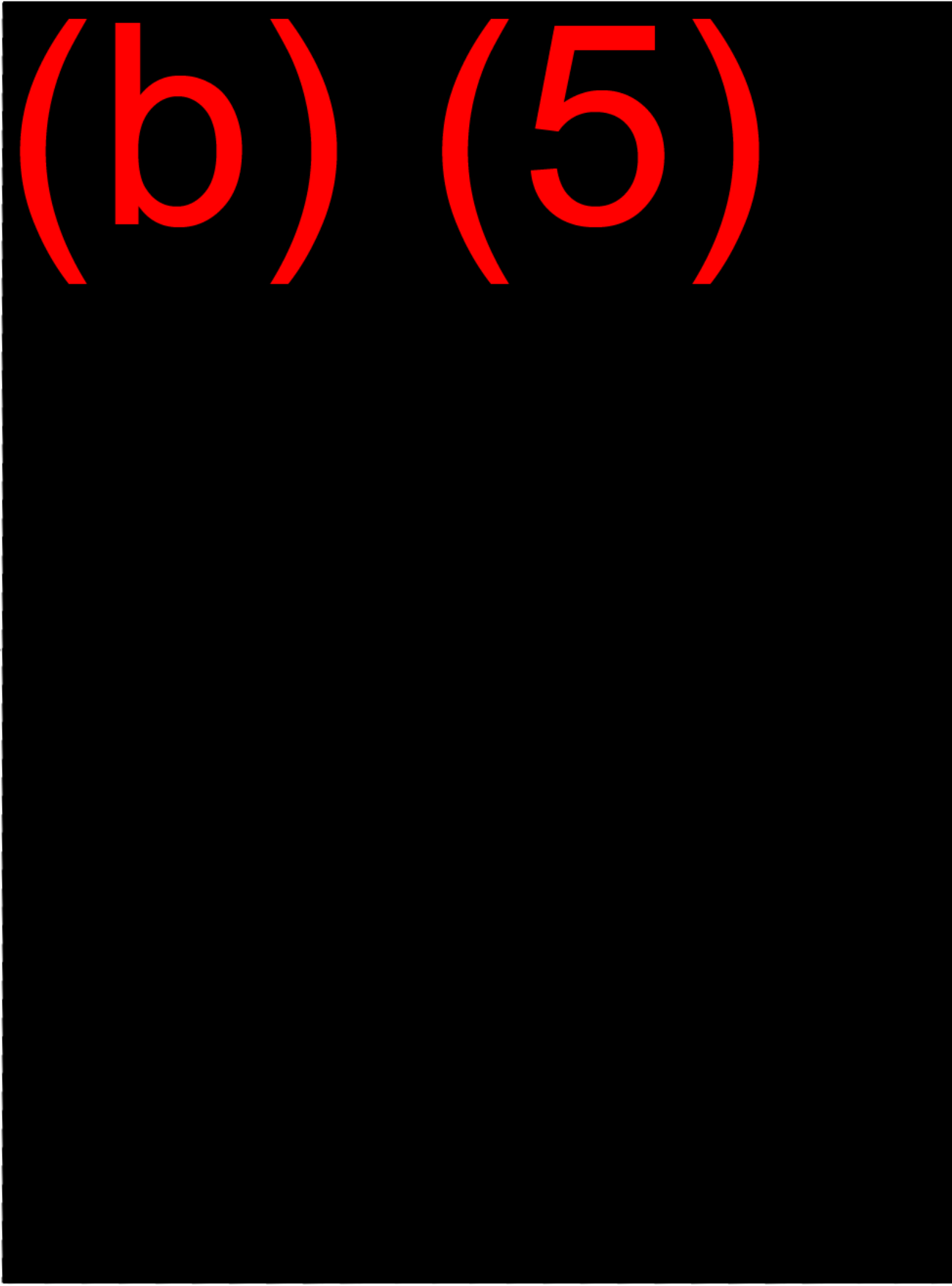
FROM: Harry Harbold (3EN42)

TO: John Buffington, Attorney
Legal Branch (3EN32)

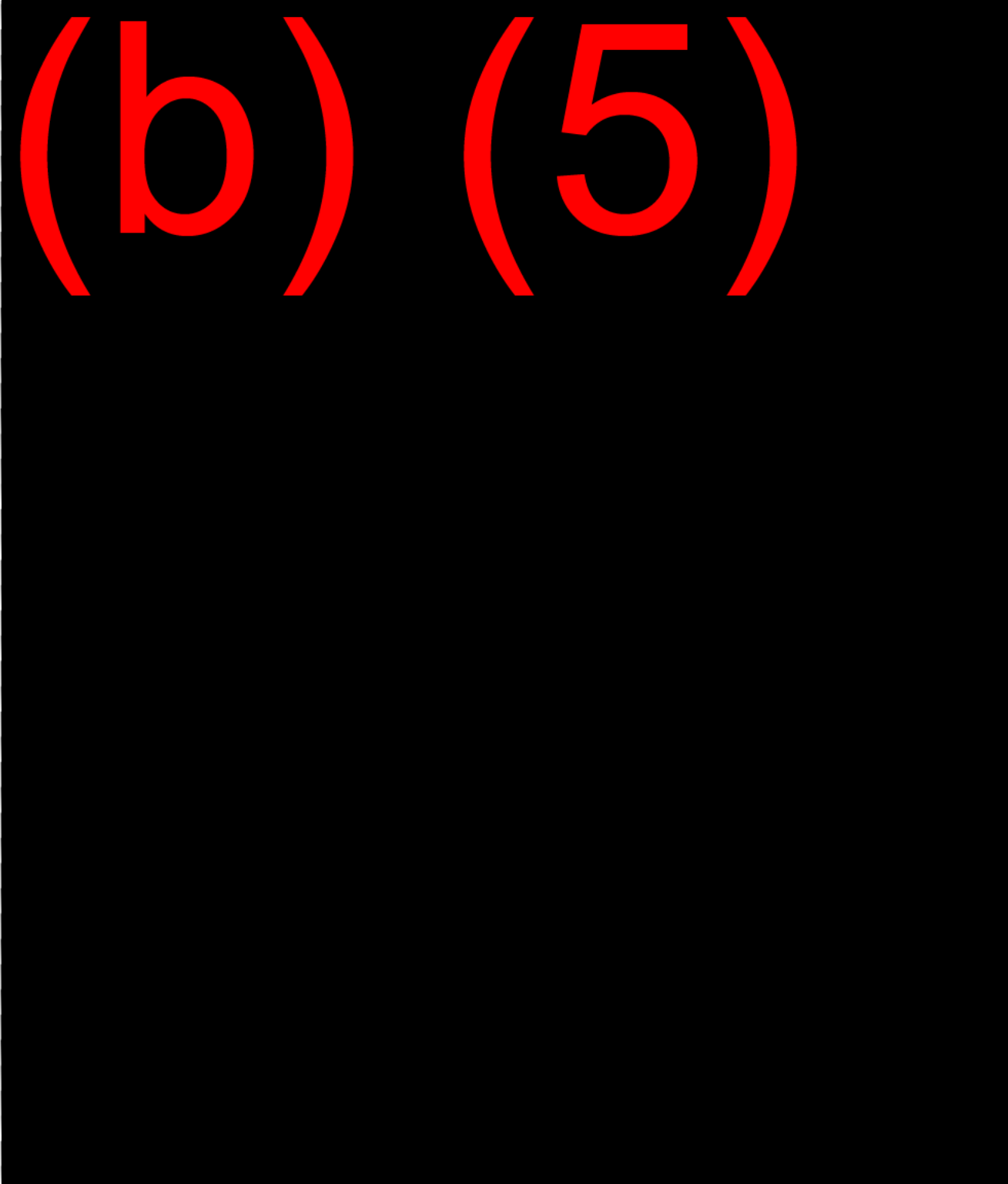
THRU: Chief, Pa.-W. Va. Municipal Section (3EN42)

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If you require additional information or have specific questions, please let me know.

Harry Harbold
5-9-75

New Cumberland, West Virginia (WV 0025119)

May 9, 1975

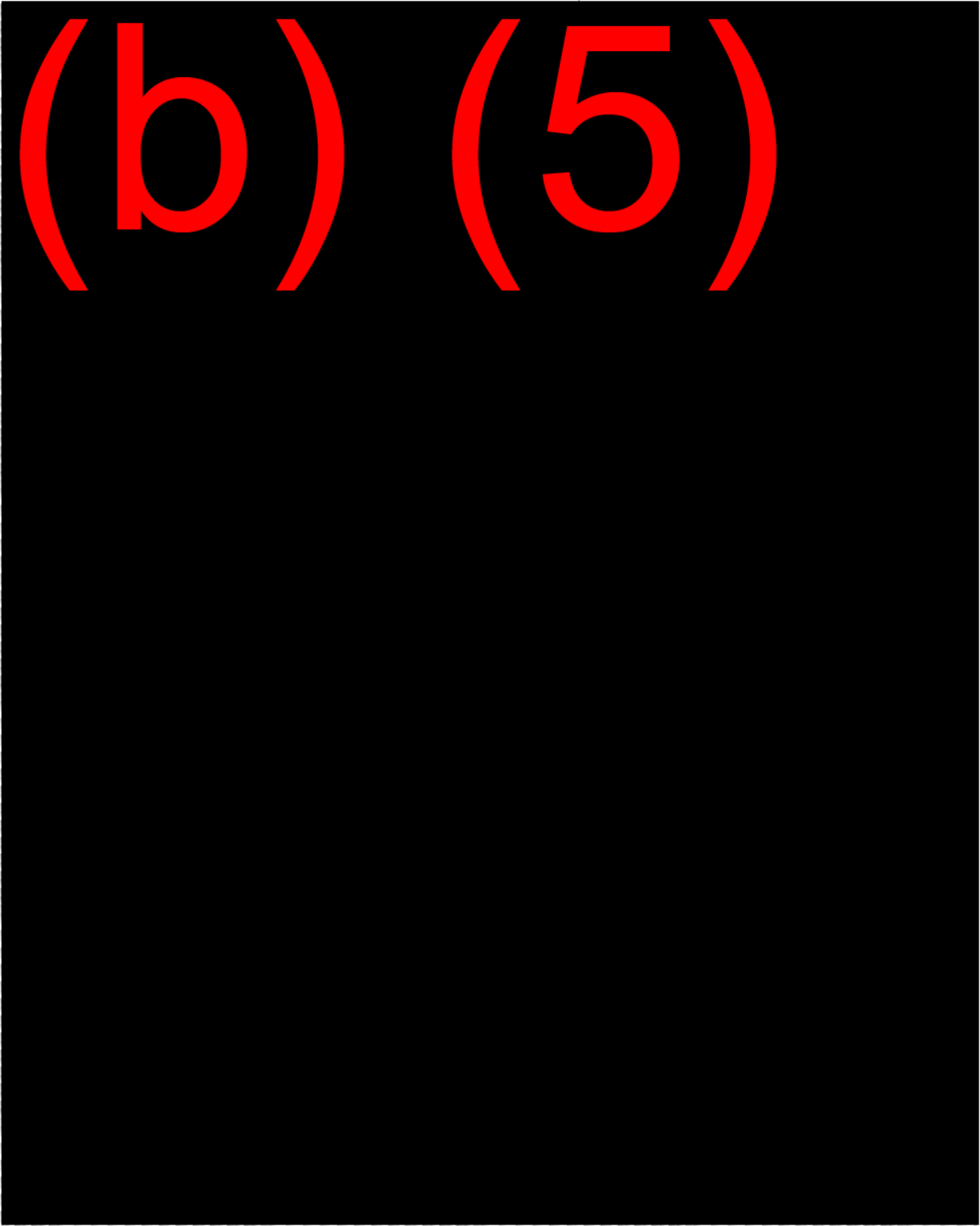
Harry Harbold (3EN40)

John Buffington, Attorney
Legal Branch (3EN32)

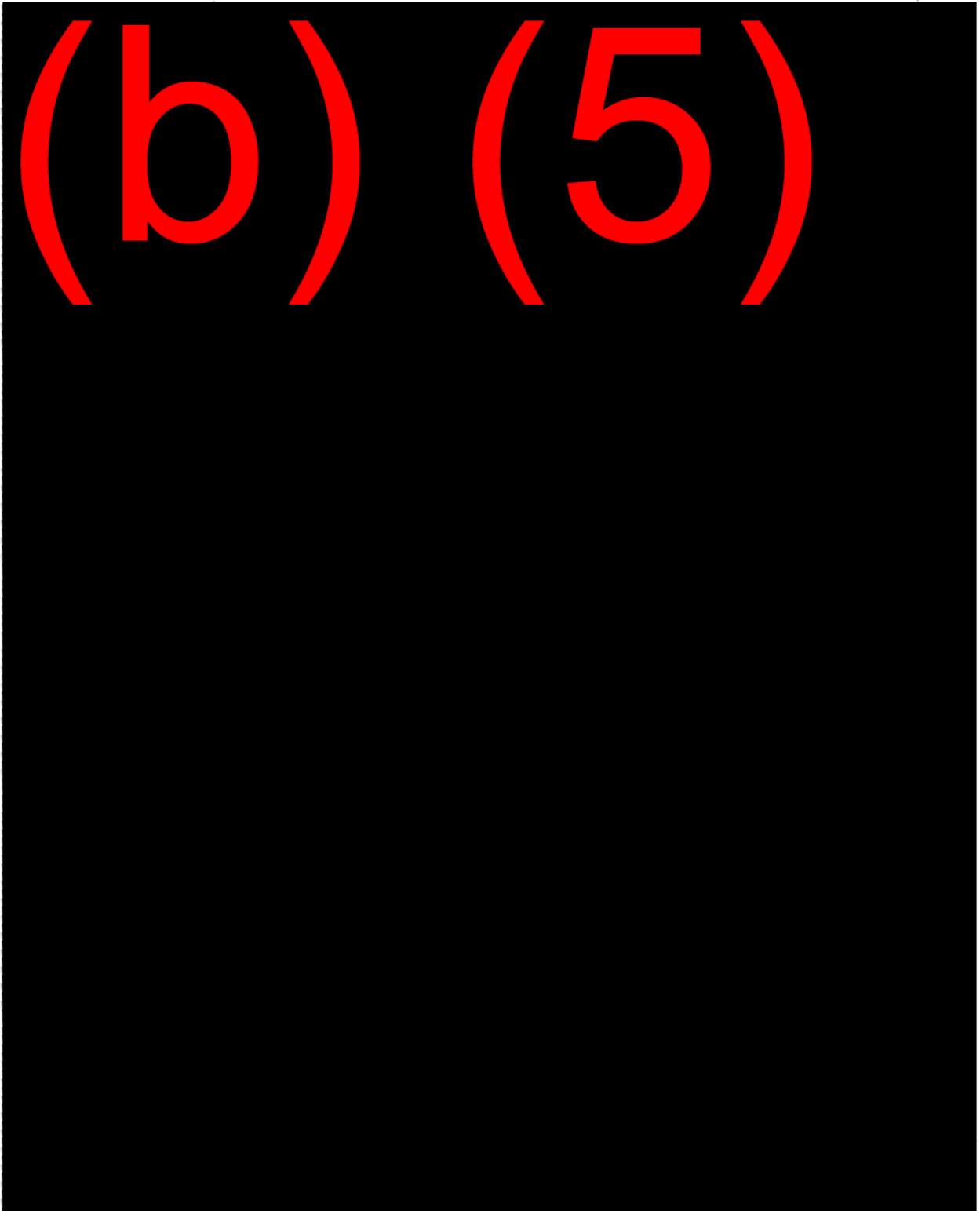
THRU; Chief, Pa.-W. Va. Municipal Section (3EN42)

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If you require additional information or have specific questions, please let me know.

SELF-MONITORING REQUIREMENTS FOR REGION III MUNICIPAL NPDES PERMITS

Plant Size MGD	Flow	BOD ₅	Suspended Solids	pH*	Fecal Coliform*
0 - 0.25	Continuous	One day per ** Month (8 hour composite)	One day per ** Month (8 hour composite)	Once per Day	One day per ** Month
0.25 - 1.0	Continuous	One day per Week (8 hour composite)	One day per Week (8 hour composite)	Once per Day	One day per Week
1.0 - 5.0	Continuous	Two days per Week (8 hour composite)	Two days per Week (8 hour composite)	Once per Day	Two days per Week
5.0 - 25.0	Continuous	Once per day *** (24 hour composite)	Once per day *** (24 hour composite)	Once per Day	Once per Day
Over 25.0	Continuous	Three per day *** (8 hour composite, each shift)	Three per day *** (8 hour composite, each shift)	Three per Day (each shift)	Once per Day

* grab sample

** type and frequency set as minimum requirement by EPA headquarters directive

*** Influent and effluent samples (others, only effluent samples unless 85% removal will govern)

Nitrogen, Phosphorus - same type and frequency as BOD₅

Metals, other parameters - generally, in accordance with tables I and III of Permit Program Guidance for Self-Monitoring and Reporting Requirements

INSTRUCTION AND PROCESS RECORD

form. Please type or print legibly, insuring readability of all copies.
Do not detach any copies.

PLAINTIFF

Environmental Protection Agency, Region III

COURT NUMBER

74-242

DEFENDANT

City of New Cumberland

TYPE OF WRIT

Administrative Order

SERVE

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN

Sharon Northcroft, City Clerk, or other responsible city official

ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)

New Cumberland, West Virginia 26047

AT

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

John V. Buffington

Environmental Protection Agency, Region III

Curtis Building, 6th and Walnut Streets

Philadelphia, Pennsylvania 19106

Show number of this writ and
total number of writs submit-
ted, i.e., 1 of 1, 1 of 3, etc.

NO. TOTAL
1 OF 1

CHECK IF APPLICABLE:

☐ One copy for U. S. Attorney or designee and
two copies for Attorney General of the U. S.
included.

SHOW IN THE SPACE BELOW AND TO THE LEFT
ANY SPECIAL INSTRUCTIONS OR OTHER
INFORMATION PERTINENT TO SERVING THE
WRIT DESCRIBED ABOVE.

SPECIAL INSTRUCTIONS:

Since this is an Administrative Order rather than a Court Action,
please send copies 1 and 3 to John Buffington.

11. 3. 1974
NO. 242 OF N. VA.

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR

John V. Buffington

TELEPHONE NUMBER

(215) 597-9840

DATE

10-8-74

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (or applicable
code) and sign USM-285 for first writ
only if more than one writ submitted.

DEPOSIT/CODE

DIST. OF
ORIGINDISTRICT
TO SERVE

LOCATION OF SUB-OFFICE OF DIST. TO SERVE

I acknowledge receipt for the total number of
writs indicated and for the deposit (if appli-
cable) shown.

SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK

DATE

☒ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in
"REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual,
company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc.,
named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above)

☐ A person of suitable age and
discretion then abiding in the
defendant's usual place of abode.

ADDRESS (Complete only if different than shown above)

FEE (If applicable)
\$ 3.00

MILEAGE

\$ 7.92

DATE(S) OF ENDEAVOR (Use Remarks if necessary)

DATE OF SERVICE

TIME

SIGNATURE OF U. S. MARSHAL OR DEPUTY

REMARKS

(b) (5)

FOR PERIOD _____ THRU _____

Page 1

Number and Date Opened	Company & Location	Pollution Problem	Type of Action	Results or Status	Date Closed
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Non Responsive based on Revised Scope					
Non Responsive based on Revised Scope					
Non Responsive based on Revised Scope					

ROUTING AND TRANSMITTAL SLIP		ACTION	
1 TO (Name, office symbol or location): <i>John Buffington</i>	INITIALS	CIRCULATE	
	DATE	COORDINATION	
2	INITIALS	FILE	
	DATE	INFORMATION	
3	INITIALS	NOTE AND RETURN	
	DATE	PER CON - VERSATION	
4	INITIALS	SEE ME	
	DATE	SIGNATURE	
REMARKS <i>Some additional questions on New Cumberland, Most important are items 1 & 2.</i>			
Do NOT use this form as a RECORD of approvals, concurrences, disapprovals, clearances, and similar actions			
FROM (Name, office symbol or location): <i>Harvey Harbold</i>		DATE	
		PHONE	<i>X-3884</i>

OPTIONAL FORM 47

AUGUST 1967

GSA FPMR (41CFR) 100-11.206

648-16-81594-1

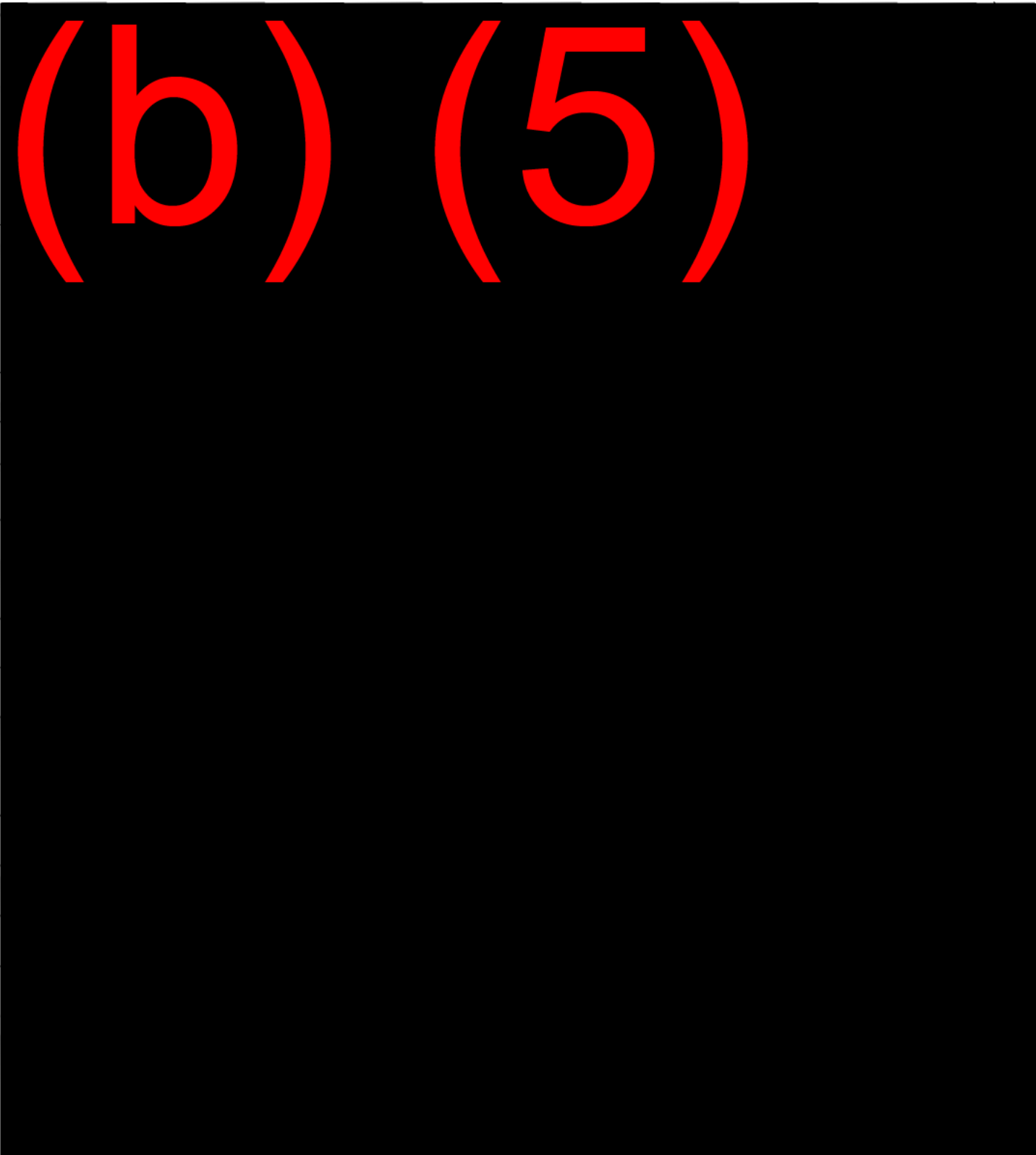
552-103

GPO

5041-101

New Cumberland
WV. 0025119

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Town of Man, West Virginia (WV 0022462)
New Cumberland, West Virginia (WV 0025119)

April 17, 1975

Acting Chief
Pa.-W. Va. Municipal Section (3EN42)

Dick Watt, Chief
Water & Pesticide Enforcement Section (3EN32)

(b) (5)

Stanley L. Laskowski

cc: Joseph A. Galda

IN REPLYING REFER TO

United States Department of Justice

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF WEST VIRGINIA
Post Office Box 591
WHEELING, WEST VIRGINIA 26003

RECEIVED
LEGAL BRANCH

1975 APR 23 AM 11 08
April 21, 1975

U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGION III

Mr. James M. Seif
Chief, Legal Branch
Enforcement Division
United States Environmental Protection Agency
Region III, 6th and Walnut Streets
Philadelphia, Pennsylvania 19106

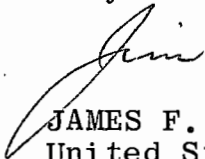
Re: City of New Cumberland 3EN32

Dear Jim:

Enclosed is a copy of a letter dated April 18, 1975 from the City Solicitor for the City of New Cumberland in response to my letter dated April 4, 1975.

Please give me a call so that we can discuss an appropriate reply to Mr. Wilson.

Very truly yours,


JAMES F. COMPANION
United States Attorney

JFC:hlw

Encl.

MAR 31 1975

ENF 4-3 74-242

In reply refer to: 3EN32

James F. Companion, Esq.
United States Attorney
P. O. Box 591
Wheeling, West Virginia 26003

Dear Mr. Companion:

The City of New Cumberland, West Virginia, is in violation of an Administrative Order issued by this office on October 8, 1974. We would very much appreciate your assistance in requiring the city to comply.

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On March 6, however, Ms. Northcraft called John and advised him that the Mayor had instructed her not to cooperate with us.

We believe that this situation calls for a letter from you to the Mayor, advising him of the penalty for wilful violation of the FWPCA. We are enclosing a draft letter for your consideration. We tried to so word it as to put the responsibility squarely on the Mayor's shoulders without aggravating the existing conflict between Mayor and City Clerk.

Leif
JVB - Thanks

Thank you for your assistance in this matter, as well as with the other problems which you have already addressed. Please feel free to call me at (215) 597-4178, or John Buffington, at (215) 597-9840, if you wish to discuss the matter further.

Sincerely yours,

Original signed by
James M. Seif

James M. Seif
Chief, Legal Branch
Enforcement Division

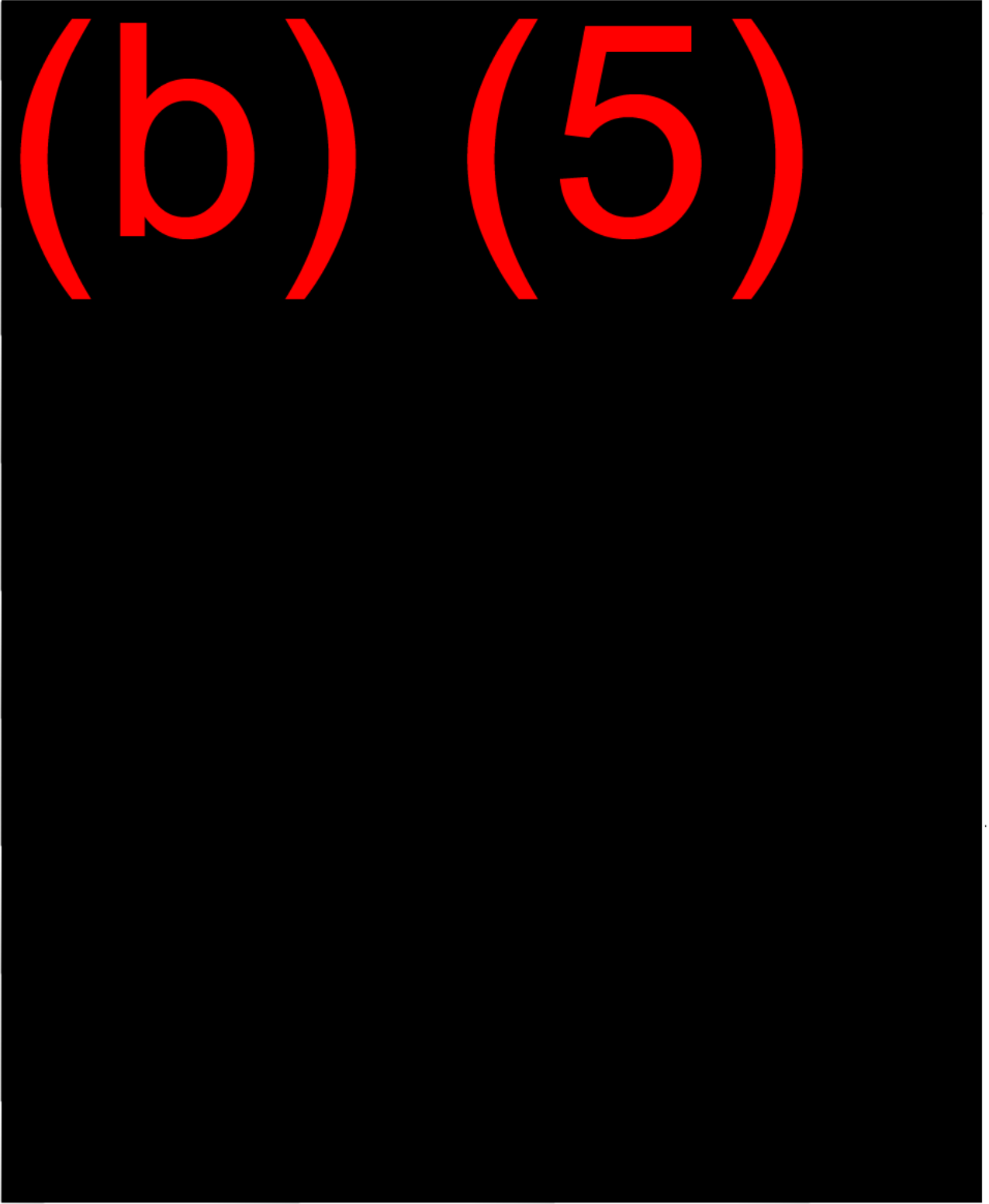
Enclosures:

August 12 letter
Administrative Order 74-242
(2 copies)
Draft letter

DRAFT

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

(b) (5)



ENVIRONMENTAL PROTECTION AGENCY

DRAFT

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

(b) (5)

SYMBOL

NAME

RM 1820-1

OFFICIAL FILE COPY

ENVIRONMENTAL PROTECTION AGENCY

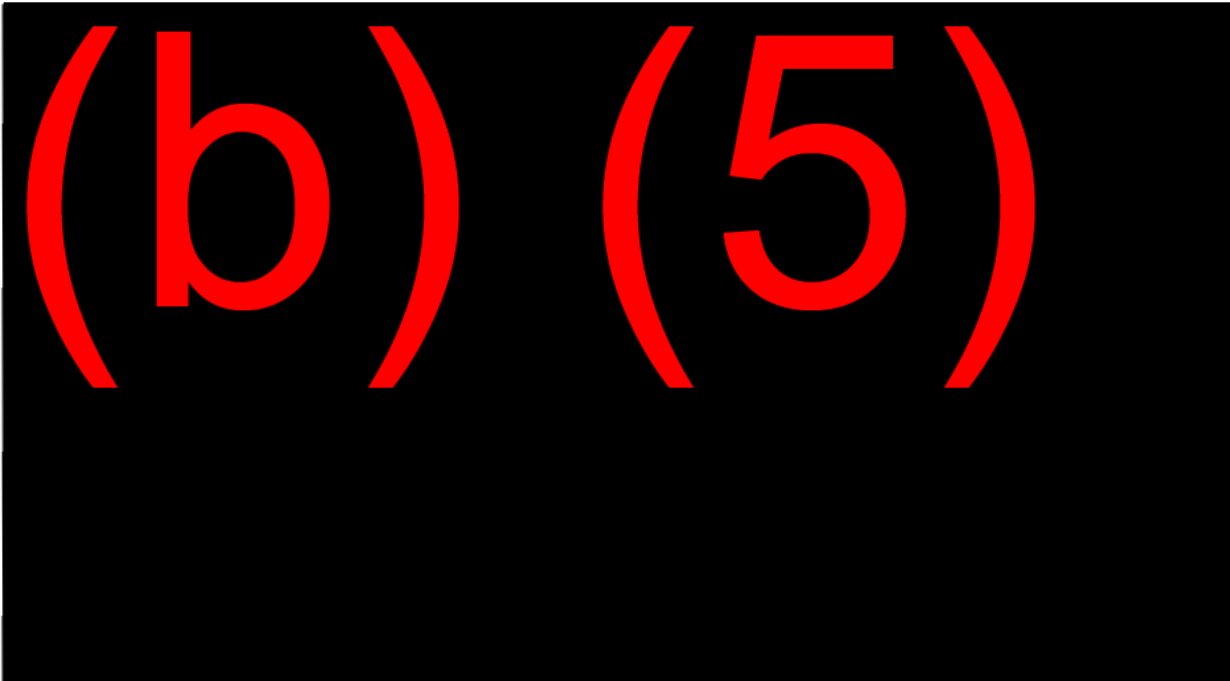
Status of Enforcement Case against
New Cumberland, W. Va.

John V. Buffington
Attorney, Legal Branch

Jeffrey W. Hass
Permit Application Section

DEC 19 1974

DEC 16 1974



3EN32 Buffington:amm:12/18/74

CONCURRENCES

AMSOI							
NAME							
ATE							

11/18/74

(b) (5)

S. Howard Longhorn
11/18/74

(b) (5)

County: Hancock

State concurrence: Ed Henry

Ray George cleared this with Warren Means in E. Henry's
absence

Copies: Headquarters ✓

Public Affairs ✓

State ✓

Buffington (2) ✓

Ray George ✓

Service: US Marshal for NDIOVA

Serve upon: Sharon Northcraft, City Clerk, or other responsible
city official

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SUBJECT: NPDES Municipal Permit Non-Compliance
WV 0025119; WV 0024392

DATE: Sept. 6, 1974

FROM: Municipal Evaluation Branch (3EN40)
Compliance Monitoring Task Force

TO: John Buffington, Legal Branch (3EN30)
Compliance Monitoring Contact

(b) (5)



Stanley L. Laskowski

Enclosure